BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Regarding the Implementation of the Suspension of Direct Access Pursuant to Assembly Bill 1X and Decision 01-09-060.	Rulemaking 02-01-011 (Filed January 9, 2002)

ADMINISTRATIVE LAW JUDGE'S RULING ON THE MOTION OF SAN DIEGO GAS & ELECTRIC COMPANY TO CLARIFY SCOPE OF PROCEEDING

This ruling is issued to clarify the scope of this phase of the proceeding in response to the motion filed on February 14, 2003, by San Diego Gas & Electric Company (SDG&E). In its motion, SDG&E asks for clarification of the scope of this phase of the proceeding to permit parties, through testimony, "to adduce facts relevant to the question of whether, going forward, a utility-specific imposition of the Direct Access Cost Responsibility Surcharge (DA CRS) may fail to achieve the dual goals of protecting bundled ratepayers and compromise the future viability of direct access in some or all areas of the State and whether a utility-specific DA CRS may impair the ability of bundled service customers to be fully reimbursed, with interest, for the undercollection associated with the difference between the various utility-specific DA CRS and the interim 2.7 cents / kWh cap."

SDG&E claims that these proceedings are the appropriate forum to consider the merits of a utility-specific versus a uniform statewide DA CRS "from the ground up." SDG&E argues that if the Commission does not consider the present and long-term effects of a utility-specific DA CRS, the DA market, at

least in certain geographic areas, may "wither and dissipate." In the interests of satisfying the dual goals of achieving bundled customer indifference and DA viability, SDG&E argues that the Commission should consider the question of whether a utility-specific DA CRS can be sustained in the near future and long-run as part of this proceeding.

SDG&E argues that although D.02-11-022 adopted a utility-specific DA CRS methodology, that Decision lacked factual support for rejecting a statewide levelizing of DA CRS. SDG&E argues that as a remedy, the Commission should allow parties, as part of this phase of the proceeding, to adduce relevant facts, at a minimum, on the following questions:

- Whether there is a current and / or projected disparity in the DA CRS among the various service territories, and if so, what are the long-term effects of that disparity on DA at large;
- Whether there has been or is projected to be a migration of DA customers out of San Diego's service territory or the State due to the imposition of DA CRS that varies by utility;
- Whether the varying DA CRS will cause different amortization periods for DA customers in different regions of the State, due solely to their location in the State, and if so, what will be the lengths and economic consequences of those amortization periods; and
- Whether there has been customer confusion or other harmful customer impacts associated with imposing differing DA CRS among DA customers who have business operations in more than one service territory in the State.

Responses to the Motion

Responses to SDG&E's motion were filed by various parties. Both Strategic Energy, L.L.C. (Strategic) and the Alliance for Retail Energy Markets and the Western Power Trading Forum (AReM / WPTF) support SDG&E's Motion, reiterating the arguments offered by SDG&E. The Utility Reform

Network (TURN) and the California Large Energy Consumers Association (CLECA) oppose the motion.

CLECA and TURN argue that the Motion was improperly filed under Rule 5, and that it is not within the authority of the ALJ to grant such a request. They argue that a motion for "clarification" is not a proper procedural vehicle for revisiting a policy position adopted in a decision of the full Commission. SDG&E disputes the characterization of its motion as seeking to modify D.02-11-022. SDG&E characterizes its motion as merely seeking permission for parties to present facts in the ensuing proceeding, without which the Commission's DA CRS regime, and the underlying policies of protecting bundled customers and maintaining the viability of DA, may well be compromised.

Discussion

As prescribed by D.02-11-022, this phase is concerned with reassessing the level of the DA CRS cap for each of the three utilities. Issues relating to the DA CRS *cap* are separate and distinct from the underlying methodology for determining the underlying total DA CRS *obligation* of each utility. The adopted methodology determining each utility's DA CRS obligation takes into account the total portfolio of each separate utility. The DA CRS cap, by contrast, represents the difference between the total obligation and the amount currently subject to collection from DA customers. The further proceedings ordered in D.02-11-022 have to do with a focused reassessment of the *cap*. The Commission did not, however, authorize further litigation in this phase as to the merits of the underlying methodology adopted in D.02-11-022 to derive each utility's *total* DA CRS *obligation*.

As stated in D.02-11-022: "Moreover, subsequent analysis of the effects of a cap on DA CRS collections *can be more focused* in that we have *now adopted a methodology* for computing indifference costs…" (Decision at 114; emphasis added). It was on the basis on this "focused" assessment of the *cap* that the Commission directed that this limited phase of the proceeding would be concluded by July 1, 2003. Opening the door to further litigation of the underlying DA CRS methodology, itself, however, would go beyond this focus, and could risk unraveling what was intended to be a tightly focused proceeding to be concluded by July 1, 2003.

To the extent that SDG&E seeks to "clarify" the scope to revisit the underlying methodology for determining each utility's total DA CRS obligation, such "clarification" would expand the scope of the proceeding beyond what was ordered in D.02-11-022. Thus, it is beyond the permissible scope of the proceeding, as defined in D.02-11-022, to conduct further litigation on whether the Commission should modify its adopted methodology to apply a statewide levelized DA CRS approach.

To the extent that SDG&E believes that D.02-11-022 lacks a sufficient record, improperly weighed the evidence, or otherwise warrants modification with respect its rejection of a state-wide levelized DA CRS methodolgy, the proper recourse to pursue a remedy would through a formal petition to modify or application for rehearing. An ALJ ruling is not a proper procedural forum in which to adjudicate questions concerning the sufficiency of the record underlying the utility-specific DA CRS methodology adopted in D.02-11-022.

Although these proceedings are not for the purpose of litigating modifications to the DA CRS methodology (e.g. statewide versus utility-specific DA CRS), they *will* consider relevant material factual evidence as to the

appropriate level of DA CRS caps consistent with achieving bundled customer indifference and preserving the economic viability of DA. In this regard, D.02-11-022 stated that this phase will consider further evidence concerning the risk of various DA CRS cap levels rendering DA contracts uneconomic. (Decision at 114-115). Thus, to the extent SDG&E, in its motion, has identified factual issues relating to the effects of various DA cap levels rendering DA uneconomic, those issues *are* properly within the scope of this proceeding as identified in D.02-11-022.

Relevant testimony may address potential levels of DA CRS caps that could cause DA customer migration out of the SDG&E service territory, or out of the State of California. Relevant testimony may also address alternative DA CRS undercollection amortization periods or methods of capping the DA CRS to resolve such problems. It is also within the scope of this phase to address how extended amortization periods may implicate bundled customer indifference and making bundled customers whole for funds used to finance DA CRS caps.

SDG&E's motion moves beyond the permissible scope of the proceeding, however, in seeking leave to use empirical evidence as a forum through which to advocate a statewide levelized DA CRS methodology as the remedy to mitigate preserve DA viability or to promote bundled customer indifference. It is outside the permissible scope of this phase of the proceeding to litigate SDG&E's proposal for a statewide levelized DA CRS as the remedy to achieve such goals.

IT IS RULED that:

1. The motion of San Diego Gas & Electric Company (SDG&E) to clarify is granted in part and denied in part.

2. To the extent parties seek to present testimony advocating for the merits of utility-specific-versus-statewide-levelized Direct Access Cost Responsibility

Surcharge (DA CRS), such testimony is beyond the scope of this phase of the proceeding.

3. To the extent parties seek to present testimony concerning effects of alternative DA CRS caps on rendering DA uneconomic and the potential for DA customer migration out of the SDG&E service territory, or out of the State of California, such testimony is within the scope of the proceeding. Testimony may also explore alternative DA CRS undercollection amortization periods or methods of capping the DA CRS as it relates to the goals of bundled customer indifference and making bundled customers whole for funds to finance DA CRS caps.

4. To the extent that SDG&E believes that D.02-11-022 lacks a sufficient record, improperly weighed the evidence, or otherwise warrants modification with respect its rejection of a state-wide levelized DA CRS methodolgy, the proper recourse to pursue a remedy would be through a formal petition to modify or application for rehearing.

Dated March 5, 2003, at San Francisco, California.

/s/ THOMAS R. PULSIFER
Thomas R. Pulsifer
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling On The Motion Of San Diego Gas & Electric Company To Clarify Scope Of Proceeding on all parties of record in this proceeding or their attorneys of record.

Dated March 5, 2003, at San Francisco, California.

/s/ KRIS KELLER
Kris Keller

N O T I C E

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